

# Spear T Ranch v. Knaub

Implications for LB 962

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Future Litigation

Presentation to NWRA January 24, 2005

# NE Supreme Court Ruling

- Constitutional & statutory rules allocate surface water under priority in time
- Groundwater allocated under reasonable use (modified correlative rights)
- DNR regulates surface water/NRDs regulate groundwater
- Surface water rules (prior appropriation) do not apply to groundwater

# NE Supreme Court Ruling

- Court recognizes claim for interference with surface water by user of hydrologically connected groundwater
- Common law should balance competing equities of groundwater users and surface water appropriators
- Adopts Restatement of Torts Second §858(1)(c)(1979) to govern conflicts
- Court urges caution when considering remedies, specifically injunctions against all pumping

# NE Supreme Court Ruling

- Under new test is groundwater user is not subject to liability for interference with the use of water of another unless:
  - gw use has direct and substantial effect on watercourse or lake and
  - unreasonably causes harm to person entitled to use of watercourse water
- Whether use has unreasonably caused harm is decided on case-by-case basis

# Reasonableness

- Courts use §850A as guide to balance equities
  - Economic & social factors
  - Impact on existing uses
  - Practicality of adjusting uses to avoid harm
- LB 962 IMP's require sustaining a balance between use & supply
  - Economic & social factors
  - Impact on existing uses
  - Controls adopted consistent with goal of sustaining balance

# We Hope

- Implementation of LB 962 will prevent future conflicts
- Other past conflicts besides Spear T will not lead to more litigation
- Spend our limited resources on long-term solutions - not lawyers and compensation